

2013 Apr-26 PM 11:57
U.S. DISTRICT COURT
N.D. OF ALABAMA

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**PROGRESSIVE EMU, INC., f/k/a
JOHNSON EMU, INC.**

**Plaintiff and
Counterclaim Defendant,**

CASE NO.

2:12-CV-01079-WMA

V.

NUTRITION & FITNESS, INC.

Defendant and Counterclaim Plaintiff.

MOTION FOR SUMMARY JUDGMENT

COMES NOW, Progressive Emu, Inc. (“Pro Emu”), the Plaintiff and Counter-Defendant in the above-styled action, and, pursuant to Rule 56(a), Federal Rules of Civil Procedure, moves this Court to enter summary judgment in its favor and against Defendants/Counter-Plaintiffs Nutrition & Fitness, Inc. (“NFI”), in the above-styled action.

1. Pro Emu avers that there is no genuine issue of material fact concerning the interpretation of the contracts controlling the relationship between Pro Emu and it is entitled to a judgment as a matter of law against NFI. This Motion is based upon the following evidence:

- a. The Pleadings;
- b. The Deposition of Andy Martin, attached hereto as Appendix 1;
- c. Appendix 2

2. This Motion is supported by the Memorandum in Support of Pro Emu's Motion for Summary Judgment filed simultaneously herewith.

WHEREFORE, PREMISES CONSIDERED, Pro Emu requests the Court enter a summary judgment against defendants/counter-plaintiffs, NFI, regarding the interpretation of the terms of the contracts which control the parties' relationship and for such further and additional relief as the Court deems proper.

Respectfully submitted this 26th day of April, 2013.

/Deanna L. Weidner

David B. Anderson

Deanna L. Weidner

Marvis L. Jenkins

Attorneys for Progressive Emu, Inc.

OF COUNSEL:

ANDERSON WEIDNER

Financial Center

505 North 20TH Street, Suite 1450

Birmingham, AL 35203

Telephone: (205) 324-1230

Facsimile: (205) 322-3890

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing upon all counsel of record by electronically filing same with the Clerk of the Court by using the Federal judicial e-filing system, on this the 26th day of April, 2013, which will send a notification of such filing to the following:

George G. Lynn
John David Collins
MAYNARD COOPER & GALE, PC
1901 6th Avenue North, Suite 2400
Birmingham, AL 35203

Charles A. Burke
Jacob S. Wharton
WOMBLE CARLYLE SANDRIDGE & RICE, LLP
One West Fourth Street
Winston-Salem, North Carolina 27101